

## **INITIAL STATEMENT OF REASONS**

**California Code of Regulations  
Title 15, Crime Prevention and Corrections  
Department of Corrections and Rehabilitation  
Corrections Standards Authority**

### **STATEMENT OF SPECIFIC PURPOSE/FACTUAL BASIS/RATIONALE FOR THE PROPOSED REGULATORY CHANGES**

#### **ARTICLE 1, GENERAL PROVISIONS**

##### **Section 1706, Definitions.**

The definition for "concept drawings" is being added to describe the drawings or architectural renderings that, along with performance criteria, participating counties will develop to describe their design-build projects.

The definition for "design-bid-build" is being added to describe the building process generally used to construct a facility. It is the building process where the project is designed by an architectural firm that produces 100 percent complete construction documents, the project is put out to bid, and a bid is awarded to a construction firm that builds the project. Because Assembly Bill 1628 added language to Government Code Sections 15820.906 and 15820.916 to allow the use of the design-build construction process with AB 900 lease-revenue bond financing, it was necessary to distinguish between the design-bid-build process and the design-build process. Therefore, titles of several sections were changed to reflect that a particular regulation has been amended to specifically describe design-bid-build requirements and new regulations were developed to specifically describe the design-build process.

The definition for "design-build" is being added to describe the building process where the project is designed and built by the same contracted entity. For these regulations there are some distinct requirements for the "design-bid-build" process that differs from the "design-build" process. Therefore, new regulations were added to describe the design-build requirements.

The definition for "ground lease" is being amended to add "Board-financed" before "local jail facility" to make it clear that the property upon which the jail project will be constructed will be financed through the State Public Works Board. In addition, the term (the "site") was deleted from this regulation because it was determined to be redundant.

The definition for "performance criteria" is being added to describe the information prepared pursuant to Public Contract Code 20133 that is provided by a participating county that fully describes the scope of the proposed design-build project.

In the definition for "Rated capacity," the Title 24 citation was amended.

The definition for "site" is being amended to add "Board-financed" before "local jail facility" to make it clear that the property upon which the jail project will be constructed will be financed through the State Public Works Board.

In the definition for "Special use beds," the Title 24 citation was amended.

## **ARTICLE 3, APPLICATION TO PARTICIPATE IN 2007 LOCAL JAIL CONSTRUCTION FUNDING PROGRAM**

### **Section 1747, Pre-funding Requirements.**

This regulation describes the requirements to be fulfilled before a Project Delivery and Construction Agreement can be entered into between the participating county, State Public Works Board, CDCR and the Authority. The pre-funding requirements are necessary in order for the Authority and CDCR to verify to the State Public Works Board that the ownership interest of the participating county of the site or sites for the project is adequate for the purposes of its financing of the project.

Assembly Bill 1628 added language to Government Code Sections 15820.906 and 15820.916 to allow the use of the design-build construction process with AB 900 lease-revenue bond financing. As a result of this change, it became necessary in some cases to amend existing regulations and create new regulations to describe the different requirements for the design-bid-build and the design-build processes. Because this regulation is specific to the design-bid-build process it was necessary to change the title to "Steps to Proceed with Construction for Design-Bid-Build Projects." Subsection (a)(3) was deleted because the review and approving of the specified documents, the summary of bids received, a statement explaining to which contractor the bid was awarded and why, and the copy of the notice to proceed issued to the contractor, is the sole responsibility of the State Public Works Board.

In subsection (a)(2) the Title 24 citation was amended.

Subsection (a)(9) was deleted. The requirement that the county certify to CDCR and the Authority that the Board has determined an action was deemed unnecessary. The Board determination in this subsection is subsumed in the other actions the Board takes with regard to the project.

### **Section 1747.1, Steps to Proceed with Construction for Design-Build Projects.**

This new regulation describes the requirements to be fulfilled before a Project Delivery and Construction Agreement can be entered into between the participating county, State Public Works Board, CDCR and the Authority for a design-build project. The pre-funding requirements are necessary in order for the Authority and CDCR to verify to the State Public Works Board that the ownership interest of the participating county of the site or sites for the project is adequate for the purposes of its financing of the design-build project.

This new regulation is being added to describe the steps to proceed with construction and the unique requirements of design-build projects.

**Section 1748, Requirements for the Project Delivery and Construction Agreement.**

This regulation describes each of the required elements of the project delivery and construction agreement between the participating county, State Public Works Board, CDCR and the Authority. The elements listed in this regulation are required by statute and are necessary to the lease revenue-bond funding process through the State Public Works Board.

Subsection (c) is being amended to add the term "design-build" in front of "contractors." This was done to make it clear that both the construction contractor and the design-build contractor must post payment and performance bonds.

**Section 1749, Submittal of Architectural Drawings and Specifications.**

Government Code Sections 15820.906 and 15820.916 requires the Authority to review and approve the plans and specifications of local jails considered for funding through the 2007 Local Jail Construction Funding Program. This regulation describes the requirements for that process.

This regulation requires that the Authority approve the construction document plans and specifications before state moneys can be encumbered in contracts by participating counties. This is the traditional design-bid-build construction project delivery system where the county completes the design of the project, the Authority reviews the construction document drawings (architectural plans and specifications that are 100% complete) and approves the project. The county then bids the project and then begins construction of the project and submits invoices in arrears for payment. Because this regulation is specific to the submittal of drawings and specifications for design-bid-build process it was necessary to change the title to "Submittal of Architectural Drawings and Specifications for Design-Bid-Build Projects."

Reference to the submittal of the Operational Program Statement in subsection (a) was deleted here but added to Section 1750. This was done to include all of the required pre-construction submittals (outside of architectural drawings) into one regulation.

In subsection (d) the Title 24 citation was amended.

**Section 1749.1, Submittal of Performance Criteria and Architectural Drawings and Specifications for Design-Build Projects.**

Assembly Bill 1628 added language to Government Code Sections 15820.906 and 15820.916 to state that no state moneys shall be encumbered in contracts let by a participating county until either final architectural plans and specifications have been approved by the CSA, and subsequent construction bids have been received (this process is addressed in Section 1749), or documents prepared by a participating county pursuant to paragraph (1) of subdivision (d) of Section 20133 of the Public Contract Code have been approved by the CSA, and a design-build contract has been awarded pursuant to that section. This new regulation addresses the design-build process. This new regulation outlines the requirements for counties to submit documents in accordance with Public Contract Code Section 20133. Once the Authority has approved the documents and a design-build contract has been awarded pursuant to that section, the participating county can begin construction of the project and submit invoices in arrears for payment.

**Section 1750, Staffing Plan/Operating Cost Analysis.**

This regulation requires that counties develop a plan that describes how the new facility will be staffed and how its operation will be funded. The title of this regulation has been changed to "Operational Program Statement/Staffing Plan/Operating Cost Analysis for Design-Bid-Build Projects." This regulation is now specific to design-bid-build projects and subsection (a) has been added to include the requirement to submit an Operational Program Statement. Previously a requirement in Section 1749, it was added here to include all of the required pre-construction submittals into one regulation.

### **Section 1750.1, Operational Program Statement/Staffing Plan/Operating Cost Analysis for Design-Build Projects.**

Government Code Sections 15820.906 and 15820.916 requires counties to staff and operate local jails built through the 2007 Local Jail Construction Funding Program. This new regulation is specific to design-build projects and requires that counties that utilize this construction method develop a plan that describes how the new facility will be operated (the Operational Program Statement), staffed (the Staffing Plan) and how its operation will be funded (the Operating Cost Analysis). The purpose of these documents is to encourage counties to study and analyze their facility design and its impacts on on-going costs.

The terms “post identification” and “transition team program statement” as utilized in this section are not defined as these are terms of art that have a standard use and understanding in the corrections industry. The county will also be required to submit an analysis of a thirty (30) year lifecycle operating costs and maintenance and energy costs for the proposed facility. This is to ensure that the county has considered costs beyond the construction costs, and has acknowledged the on-going operating costs of a jail facility over the typical thirty (30) year lifecycle of such facilities.

### **Section 1752, Ground Lease.**

This regulation describes the transfer of the possession and control of the property upon which the local jail facility will be constructed from the county to CDCR. It has been amended to delete reference to the ground lease being in a form agreed to by the Office of the Attorney General, the Board and the Authority. This reference was determined to be unnecessary because the development of all the agreements for this construction program was a collaborative effort between all the effected State agencies and the State Public Works Board relies on the legal review from the Department of Finance.

## **ARTICLE 4, ADMINISTRATION OF THE PROCEEDS OF THE STATE BOND FUNDS AND PROJECT MONITORING**

**Section 1756, Disbursement of the Proceeds from the Lease-Revenue Bond Funds.** This regulation describes how the proceeds from the lease-revenue bonds are disbursed to participating counties. As currently written, this regulation applies to the design-bid-build process (the Authority must approve the construction document plans and specifications pursuant to Section 1749 and subsequent bids have been received before state moneys can be encumbered in contracts by participating counties.)

Subsection (a) has been amended to apply to both the design-bid-build process and the design-build process. This amendment will require counties utilizing the design-build process to submit performance criteria or performance criteria and concept drawings for approval by the CSA pursuant to Section 1749.1. Upon approval of those documents by the Authority, and with a design-build contract pursuant to Section 1749.1, the participating county can begin construction of the project and submit invoices in arrears for payment.

**Section 1757, Pooled Money Investment Board.**

This regulation describes the financing provided by the Pooled Money Investment Board (pursuant to Government Code Sections 16312 and 16313) through the CDCR to the participating county, for the local jail project until lease-revenue bonds are available. Currently this regulation only infers that this interim financing is available for design-bid-build projects.

Subsection (b) has been amended to clarify that this regulation applies to design-bid-build and design-build projects. Also, statutory references were corrected.

**Section 1767, Completion of Project.**

This regulation requires the county to construct the project in accordance with the agreements, plans and specifications as approved by the Board and the Authority.

This regulation is being amended to clarify that it applies to both design-bid-build projects and design-build projects.

**REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

No other alternatives were considered by the CSA.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

These regulations affect county jail construction, not businesses, so there is no significant statewide adverse economic impact that directly affects businesses.

**REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The CSA did not identify any alternatives that would lessen any adverse impact on small businesses, since these proposed regulations affect only county jail construction.

**TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS**

The CSA did not rely upon any technical, theoretical or empirical studies, reports or documents in proposing the modification to these regulations.